

Courts and Social Context Theory: Philippine Judicial Reform as Applied to Vulnerable Sectors

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I. INTRODUCTION.....	824
II. SPECIFIC CONSTITUTIONAL MANDATE AND RELATED LAWS.....	826
A. Protection of Women	
B. Protection of Children	
C. Protection of Indigenous Peoples	
III. JUDICIAL APPLICATION.....	829
A. Applying the Laws to Sectoral Diversity	
B. The Judiciary's Two-Tiered Response	
IV. PROPOSED FRAMEWORK: THE SOCIAL CONTEXT THEORY.....	851
Models of Impartiality	
V. SOCIAL CONTEXT IN THE PHILIPPINE SETTING.....	855
A. Women	

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B. Children

C. Indigenous Peoples

VI. CONCLUSION..... 863

“An honorable, competent and independent judiciary exists to administer justice and thus promote the unity of the country, the stability of the government, and the well-being of the people.”

— Preamble, 1989 Code of Judicial Conduct

I. INTRODUCTION

The present Constitution under the Article on Social Justice and Human Rights¹ provides:

The Congress shall give highest priority to the enactment of measures that protect and enhance the right of all the people to human dignity, reduce social, economic and political inequalities, and remove cultural inequities by equitably diffusing wealth and political power for the common good.²

More succinctly, what the Constitution ushered in with this provision was a mandate of a legal bias in favor of those who are underprivileged.³ Comparing this provision with previous Constitutions, it is noticeable that, under the 1935 Constitution, no separate Article is given regarding the subject. It is, however, mentioned — albeit briefly and indirectly — under a single provision, specifically Section 5 of Article II thereof.⁴ Unfortunately, the concept of social justice under this earlier constitution was limited only to the economic security of the people. Similarly, the 1973 Constitution sought particularly to advance only such economic justice; this time, in the form of a provision affording full protection to labor, full employment and equality in employment.⁵ The import of the change under the present Constitution is that the notion of social justice now implies that, when the

1. PHIL. CONST. art. XIII.

2. PHIL. CONST. art XIII, § 1, ¶ 1.

3. JOAQUIN BERNAS, S.J., *THE 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES: A COMMENTARY 1191* (2003 ed.) [hereinafter BERNAS COMMENTARY].

4. 1935 PHIL. CONST. art. II, § 5 (superseded 1973 and 1987). The provision states:
Section 5. The promotion of social justice to insure the well-being and economic security of all the people should be the concern of the State.

5. 1973 PHIL. CONST. art IX, § 2 (superseded 1987).

law can be interpreted in two or more different ways, the interpretation which favors the underprivileged must be used.⁶

The present definition of social justice as provided in the 1987 Constitution has expanded from its earlier roots to cover not only economic social justice but political social justice as well. This is gleaned from the legislative intent of the Constitutional Commission, as shown by the deliberate use of the phrase “highest priority” which indicates that what is expected of Congress is not the simple exercise of day-to-day police power but rather of powers needed to achieve radical social reform of critical urgency.⁷ This reform called for extends to several sectors of the society and is exhibited and applied in cases of controversy through the decisions of the Supreme Court.⁸

The purpose of this paper is to examine the impact of the constitutional reform measures in Article XIII beyond congressional or executive initiatives. It will inquire into the contributions of the Judiciary in implementing the constitutional mandate, particularly the challenge to the Judiciary in sensitizing its members to the plight of vulnerable sectors,

6. BERNAS COMMENTARY, *supra* note 3, at 1191.

7. *Id.* at 1193.

8. *See, e.g.,* Philippine Telegraph and Telephone Company v. National Labor Relations Commission (NLRC), 272 SCRA 596 (1997) (this case illustrates the tendency of the Supreme Court to make decisions which take into account the context of women, as well as their vulnerability, in accord with social justice).

This case involved a situation where the private respondent, who was applying for a job in PT&T, indicated in her application form that she was single although a few months earlier she had actually contracted marriage. She was accepted for the job and subsequently, she made the same representation regarding her civil status in two successive reliever agreements. The petitioner, upon learning of the discrepancy, dismissed the private respondent. The issue raised before the Supreme Court was whether or not the company practice of requiring a *single* civil status for employment is valid. As a side issue, the High Court also answered whether or not concealment of married status is a valid ground for termination or dismissal. In the words of Justice Regalado, the Court held that:

Petitioner's policy is not only in derogation of the provisions of Article 136 of the Labor Code on the right of a woman to be free from any kind of stipulation against marriage in connection with her employment, but it likewise assaults good morals and public policy, tending as it does to deprive a woman of the freedom to choose her status, a privilege that by all accounts inheres in the individual as an intangible and inalienable right.

applying the *Social Context Theory* as an aid in exercising judicial functions. In order that this may be demonstrated, focus will be given on three sectors of immediate concern, namely: women, children and indigenous peoples.

II. SPECIFIC CONSTITUTIONAL MANDATE AND RELATED LAWS

A. Protection of Women

The Philippine Constitution recognizes the role of women in nation-building and ensures the fundamental equality before the law of women and men.⁹ In recognition of the important role of women, the Constitution likewise provides that the State shall protect working women by providing safe and healthful working conditions, taking into account their maternal functions, and such facilities and opportunities that will enhance their welfare and enable them to realize their full potential in the service of the nation.¹⁰ Congress, for its part, has also recognized the important role of women and has passed several statutes protecting the rights of women and making the courts more gender sensitive, such as The Rape Victim Assistance and Protection Act,¹¹ the Anti-Rape Law of 1997,¹² the Anti-Sexual Harassment Act,¹³ the Family Courts Act,¹⁴ the Anti-Violence Against Women and their

9. PHIL. CONST. art II, § 14.

10. PHIL. CONST. art XIII, § 14.

11. An Act Providing Assistance and Protection for Rape Victims, Establishing for the Purpose a Rape Crisis Center in Every Province and City, Authorizing the Appropriation of Funds Therefor and for Other Purposes, Republic Act No. 8505 (1998).

12. An Act Expanding the Definition of the Crime of Rape, Reclassifying the Same as a Crime Against Persons, Amending for the Purposes Republic Act No. 3815, as Amended, Otherwise Known as the Revised Penal Code and for Other Purposes, Republic Act No. 8353 (1997).

13. An Act Declaring Sexual Harassment Unlawful in the Employment, Education or Training Environment and for Other Purposes, Republic Act No. 7877 (1995).

14. An Act Establishing Family Courts, Granting Them Exclusive Original Jurisdiction Over Child and Family Cases, Amending Batas Pambansa Bilang 129, as Amended, Otherwise Known as the Judicial Reorganization Act of 1980, Appropriating Funds Therefor and for Other Purposes, Republic Act No. 8369 (1997).

Children Act of 2004¹⁵ and various provisions regarding women found in the Labor Code.¹⁶

In addition, the Philippines subscribes to human rights protection through domestic laws and international laws. Through the doctrine of incorporation, the Constitution provides that the Philippines adopts the generally accepted principles of international law as part of the law of the land.¹⁷ Thus, international law remains also a basic consideration when it comes to the treatment of women. Some of the significant international conventions are: the 1949 Convention on the Suppression of Traffic in Persons,¹⁸ the Equal Remuneration Convention,¹⁹ the Convention on the Political Rights of Women,²⁰ the Discrimination (Employment and Occupation) Convention,²¹ the Declaration on Women in Emerging Armed Conflict,²² and, the Convention on the Elimination of All Forms of Discrimination Against Women.²³

15. An Act Defining Violence Against Women and Their Children, Providing Protective Measures for Victims, Prescribing Penalties Therefore, and for Other Purposes, Republic Act No. 9262 (2003).

16. A Decree Instituting a Labor Code Thereby Revising and Consolidating Labor and Social Laws to Afford Protection to Labor, Promote Employment and Human Resources Development and Insure Industrial Peace Based on Social Justice [LABOR CODE], Presidential Decree No. 442, arts. 130-38 (1974).

17. PHIL. CONST. art. II, § 2.

18. Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, 96 U.N.T.S. 271, *entered into force* July 25, 1951.

19. Convention Concerning Equal Remuneration for Men and Women Workers for Work of Equal Value, and Women Workers for Work of Equal Value (ILO No. 100), 165 U.N.T.S. 303, *entered into force* May 23, 1953.

20. Convention on the Political Rights of Women, 193 U.N.T.S. 135, *entered into force* July 7, 1954.

21. Discrimination (Employment and Occupation) Convention (ILO No. 111), 362 U.N.T.S. 31, *entered into force* June 15, 1960.

22. Declaration on the Protection of Women and Children in Emergency and Armed Conflict, G.A. res. 3318 (XXIX), 29 U.N. GAOR Supp. (No. 31) at 146, U.N. Doc. A/9631 (1974).

23. Convention on the Elimination of All Forms of Discrimination against Women, G.A. res. 34/180, 34 U.N. GAOR Supp. (No. 46) at 193, U.N. Doc. A/34/46, *entered into force* Sept. 3, 1981.

B. Protection of Children

With regard to children, the Constitution recognizes the vital role of the youth in nation-building and promotes and protects their physical, moral, spiritual, intellectual, and social well-being. It further inculcates, in the youth, patriotism and nationalism, and encourages their involvement in public and civic affairs.²⁴ Aside from the Constitution, various laws have been enacted by Congress to protect the rights of children. The more notable ones are the Special Protection of Children Against Abuse, Exploitation and Discrimination Act,²⁵ the Child and Youth Welfare Code,²⁶ and the Labor Code.²⁷ Some of the laws regarding women mentioned earlier also take into consideration the protection of children, such as, the Family Courts Act, and the Anti-Violence Against Women and Their Children Act of 2004. Finally, with regard to international law, the United Nations Convention on the Rights of a Child (CRC)²⁸ serves as an interpretative tool for domestic courts.

C. Protection of Indigenous Peoples

Lastly, but not to be forgotten, indigenous peoples have also been constitutionally guaranteed protection within the framework of national unity and development.²⁹ In terms of legislation, the passage of the Indigenous Peoples Rights Act (IPRA)³⁰ has influenced the way mainstream society views indigenous peoples. The IPRA, however, provides merely an initial step in addressing the concerns of indigenous peoples. In concurrence, international standards, such as, the United Nations Draft Declaration on the Rights of Indigenous People,³¹ and the Convention

24. PHIL. CONST. art. II, § 13.

25. An Act Providing for Stronger Deterrence and Special Protection Against Child Abuse, Exploitation and Discrimination and for Other Purposes, Republic Act No. 7610 (1992).

26. The Child and Youth Welfare Code, Presidential Decree No. 603 (1974).

27. LABOR CODE, arts. 139-40.

28. Declaration of the Rights of the Child, G.A. res. 1386 (XIV), 14 U.N. GAOR Supp. (No. 16) at 19, U.N. Doc. A/4354 (1959).

29. PHIL. CONST. art. II, § 22.

30. An Act to Reorganize, Protect and Promote the Rights of Indigenous Cultural Communities/Indigenous Peoples, Establishing Implementing Mechanisms, Appropriating Funds Therefor and for Other Purposes, Republic Act No. 8371 (1997).

Concerning Indigenous and Tribal Peoples in Independent Countries,³² also influence standard-setting at the domestic level.

III. JUDICIAL APPLICATION

A. *Applying the Laws to Sectoral Diversity*

The changes embodied in the 1987 Constitution regarding social justice and human rights and the subsequent enactment of laws related to vulnerable sectors have created a whole new paradigm in understanding these vulnerable sectors. But, for all the constitutional liberality in favor of the underprivileged, courts are still not permitted to tolerate behavior that is contrary to law.³³

In the dispensation of cases, the constitutional mandate does not require a judge to exhibit sensitivity to parties of a case at the expense of impartiality. Rather, it merely requires a judge to provide special protection for those particularly identified in the Constitution as marginalized. The ratio for this is explained in *International School Alliance of Educators v. Quisumbing*,³⁴ where the Court held that the fact,

[T]hat public policy abhors inequality and discrimination is beyond contention. Our Constitution and laws reflect the policy against these evils. The Constitution in the Article on Social Justice and Human Rights exhorts Congress to 'give highest priority to the enactment of measures that protect and enhance the right of all people to human dignity, reduce social, economic, and political inequalities.' The very broad Article 19 of the Civil Code requires every person, 'in the exercise of his rights and in the performance of his duties, [to] act with justice, give everyone his due, and observe honesty and good faith.'

International law, which springs from general principles of law, likewise proscribes discrimination. General principles of law include principles of equity, *i.e.*, the general principles of fairness and justice, based on the test of what is reasonable. The Universal Declaration of Human Rights, the

31. See Draft Declaration on the Rights of Indigenous Peoples, U.N. Doc. E/CN.4/Sub.2/1993/29/Annex I (1993); see also Draft Declaration on the Rights of Indigenous Peoples, U.N. Doc. E/CN.4/Sub.2/1994/2/Add.1 (1994).

32. Convention Concerning Indigenous and Tribal Peoples in Independent Countries (ILO No. 169), 72 ILO Official Bull. 59, entered into force Sept. 5, 1991.

33. BERNAS COMMENTARY, *supra* note 3, at 1192.

34. *International School Alliance of Education v. Quisumbing*, 333 SCRA 13 (2000).

International Covenant on Economic, Social, and Cultural Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention against Discrimination in Education, the Convention (No. 111) Concerning Discrimination in Respect of Employment and Occupation — all embody the general principle against discrimination, the very antithesis of fairness and justice. The Philippines, through its Constitution, has incorporated this principle as part of its national laws.

In the workplace, where the relations between capital and labor are often skewed in favor of capital, inequality and discrimination by the employer are all the more reprehensible.

The Constitution specifically provides that labor is entitled to “humane conditions of work.” These conditions are not restricted to the physical workplace — the factory, the office or the field — but include as well the manner by which employers treat their employees.³⁵

What such ruling magnifies is that there are instances when a situation is skewed in favor of one party because of factors beyond the control of the individuals involved — in this case, such factors are exemplified by economic conditions. The Constitution and the laws therefore try to equalize this condition by giving focus and attention to sectors in need of special protection. The challenge posed before the Judiciary is how to apply this new legal framework to concrete cases involving vulnerable sectors with predictability and consistency.

1. Preliminary Change in Perspective: Recognizing a Dynamic Society

For a judge to take the proper perspective, there is, primarily, a need to recognize the dynamic character of society. As society changes, two things must likewise occur: first, the law reform initiative must become responsive to the current needs of the society; and second, those implementing the law and the justice system should be able to effectively carry out these changes. As regards the first requirement, the law cannot be immune to changes in the society because: (1) the law is a social institution; and (2) the law is a mode of social interaction and regulation. Hence, the law can never be static; and hence the necessity of responsiveness. At present, Philippine legislators have created a set of laws aimed at addressing diversity. Thus, the challenge faced by judges is to apply these laws in the disposition of cases involving vulnerable sectors, taking into account relevant historical context as well as present societal norms.

35. *Id.* at 19-20 (citing PHIL. CONST. art. XIII, § 3, ¶ 2).

2. Gender as an Example

The case of gender sensitivity is a good example. The judicial definition of equality reflects societal norms, cultural tensions and limits concerning sexual roles. Historically, stereotypical conceptions of women include gender bias. Gender bias, which pertains to a person's preconceived notion of the nature and roles of women and men, may also refer to society's perception of what the "worth" of women and men are by distinguishing, for example, "women's work" from "men's work." Included in such perception are myths and misconceptions about the economic and social realities of the lives of women and men.³⁶ In the United States, the Judicial Council of California Advisory Committee on Gender Bias in the Courts defines gender bias as the "behavior or decision-making of participants in the justice system that is based on or reveals (1) stereotypical attitudes about the nature and roles of women and men; (2) cultural perception of their relative worth; (3) myths and misconceptions about the social and economic realities encountered by both sexes."³⁷

In the Philippines, select studies over the past twenty years have shown that court decisions have been influenced by biased attitudes, sex stereotypes, myths and misconceptions about male and female traits, roles and capabilities.³⁸ Some judges are known to rule in favor of the defendants when their pleadings invoke the failure of women to conform to traditional roles and norms. Tolerance for the commission of domestic violence is in fact premised on the failure of women to fulfill domestic roles like housekeeping, obedience to the wishes of the husband and fidelity. This is more particularly illustrated in the case of *People v. Samson*³⁹ wherein the husband, upon tasting the coffee served by his wife, suddenly pulled her by the hair and complained of the kind of coffee she had given him.⁴⁰ Interestingly enough, it has been shown that judges can also be misled into believing that an accused could not have possibly committed the crime for which a defendant is being tried because of his good looks, respectful

36. MYRNA S. FELICIANO, CAROLYN I. SOBRITCHEA, DANTE B. GATMAYTAN, & FLORDELIZA VARGAS, GENDER SENSITIVITY IN THE COURT SYSTEM 11 (2002) [hereinafter FELICIANO ET AL.].

37. Rena M. Atchison, *A Comparison of Gender Bias Studies: Eight Circuit Court of Appeals and South Dakota Findings in the Context of Nationwide Studies*, 43 S.D.L. Rev. 616, 616-17 (1998).

38. FELICIANO ET AL., *supra* note 36, at 11.

39. *People v. Samson*, 7 SCRA 478 (1963).

40. FELICIANO ET AL., *supra* note 36, at 16-17.

appearance and kind disposition,⁴¹ especially when the judge perceives the complainant to be abrasive, antagonistic, aggressive, seductive, or flirtatious.⁴² Unfortunately, this is aggravated by the fact that a judge's perception is often a mere reflection of society's demeaning outlook of women.⁴³

However, it is not only the perception of judges that discourage women from litigating their cases. The litigation process itself is daunting. By and large, the processes leading to the determination of probable cause and the tedious court trials are very insensitive to the situation and needs of female victims or complainants. Among the many examples of court insensitivity are: (1) requiring the plaintiff to prove that the alleged sexual conduct was unwelcome; (2) allowing a defendant to introduce evidence of the victim's promiscuous appearance and behavior or past experiences; and (3) giving lawyers, both during the pre-trial proceedings and court hearings, the license to grill victims about irrelevant details of the crime and their previous sex lives.⁴⁴ In addition, local male lawyers, and judges in general, show their lack of interest in cases like sexual harassment, rape, and domestic battering by initiating, if not tolerating, long delays in court hearings as well as in passing judgment and dismissing cases even when sufficient evidence is presented and probable cause has been adequately established.⁴⁵

Feminist lawyers in the Philippines likewise decry the fact that rape victims are often regarded with disdain and derision by investigating officers. The complainant's humiliation is usually aggravated by the skepticism and lack of sympathy displayed by the investigating officers. In the same vein, a medico-legal examination is equally a traumatic experience — especially because these examinations are usually performed by male physicians, in

41. *Id.* at 25.

42. *Id.*

43. *See* *People v. Godoy*, 250 SCRA 676, 725 (1995) (The Court, in acquitting the accused, took judicial notice of the fact that in rural areas in the Philippines, young ladies are strictly required to act with circumspection and prudence and that great caution is observed so that their reputations shall remain untainted. Any breath of scandal which brings dishonor to their character humiliates their entire families. The Court further held that: "It could precisely be that complainant's mother wanted to save face in the community where everybody knows everybody else, and in an effort to conceal her daughter's indiscretion and escape the wagging tongues of their small rural community, she had to weave the scenario of this rape drama.").

44. FELICIANO ET AL., *supra* note 36, at 22-23.

45. *Id.* at 24-25.

front of many curious onlookers, and without assistance from female personnel.⁴⁶

The failure of women to articulate their concerns as a class is generally attributed to the following causes: (1) a female victim of violence is not a party to criminal litigation and has no right to representation during trial or in a policy-making appellate level; (2) women's rights in general are relegated to the bottom of the hierarchy of interests that come up against the rights of the accused; (3) special rules of common law allow defendants to challenge the credibility of women to a greater degree than is otherwise tolerated for victims and witnesses in general; and (4) while a woman's character and other personal aspects are often exploited during criminal cases involving gender-based violence, the system has an interest in preventing individual advocacy for victims because the addition of another voice threatens to undermine the existing balance of authority.⁴⁷ It is not only women victims who are discriminated against, but there are also instances where women lawyers are subjected to a judge's biased behavior due to their young age. When judges treat them disrespectfully, the normal excuse given for such actions is that it is youthism rather than sexism at work.⁴⁸

Recognition of progressive changes in societal values, attitudes and behavior can facilitate informed decision-making by courts which are sensitive to the plight of women.

3. Next Phase: Independence as a Means to the End that is Impartiality

Professor Richard F. Devlin,⁴⁹ in his article *Judging and Diversity: Justice or Just Us?*,⁵⁰ suggests that the best way to address this challenge is to apply different judicial perspectives concurrently with techniques that are forward-looking and sensitive to cultural diversity – an advocacy of pluralistic justice, as set apart from the fixation with a concept of justice that reflects only the perspectives of those who have traditionally occupied positions of legal

46. *Id.* at 17.

47. *Id.* at 18.

48. *Id.* at 35.

49. Richard F. Devlin was an Associate Professor at the Dalhousie Law School and a Visiting Professor at the McGill University during the time he wrote his article.

50. The article is a slightly revised version of a plenary presentation at the Ontario Court of Justice (Provincial Division) annual meeting entitled, "The Court in an Inclusive Society." Some of the research for the article was funded by the Foundation for Legal Research.

responsibility and power.⁵¹ To attain this, he proposed three models of impartiality⁵² which judges may use in analyzing different situations requiring the exercise of independence and neutrality. His framework is founded under the concept of racialized diversity within in the North American context.

According to Devlin, issues of racialized diversity (or cultural diversity for that matter) are often highly charged, emotional, and can deteriorate into debates that are premised upon misunderstanding and defensiveness.⁵³ Hence it is important that judicial authority, while exhibiting sensitivity to cultural diversity, must at the same time resolve the case in such a manner that impartiality and independence is shown, so that parties may feel justice has been served. This impartiality must be distinguished from the traditional notion of impartiality, which does nothing to indicate any favoritism or hostility to any of the parties in court, and which encourages the judiciary to overemphasize independence at the expense of the former sort of impartiality.⁵⁴

True impartiality understands that while independence is obviously desirable, it is merely the means to the end of impartial and fair decision-making. It encourages members of the judiciary to pursue education programs, to lower their sights from the false deities of impartiality and objectivity to the manageable chore of getting some useful information that will help to make more equitable decisions. This translates to tasking the judiciary to minimize the risks of being uninformed, biased, or partial. While this kind of impartiality still does not guarantee objectivity or neutrality, it provides the Judiciary with a more specific set of possibilities that can generate immediate action.

B. The Judiciary's Two-Tiered Response

The Philippine Judiciary is not indifferent to this societal concern. In fact, it has initiated various programs designed to address the need for impartiality. Its response can be divided into two parts: (1) institutional reform which covers both the structure of the Judiciary and its personnel; and (2) individual reform for the members of the Judiciary. The two tiers overlap with no clear line of delineation.

51. Richard F. Devlin, *Judging and Diversity: Justice or just us?*, 20 *PROV. JUDGES J.* (THE CANADIAN ASSOCIATION OF PROVINCIAL COURT JUDGES) 4 (1996).

52. *Id.* at 8-20.

53. *Id.* at 4.

54. *Id.* at 6.

I. Institutional Reform

a.) Action Program for Judicial Reform

In the year 1998, former President Joseph Estrada appointed Hilario G. Davide, Jr.⁵⁵ to be the Chief Justice of the Philippine Supreme Court. Ever since his appointment, the Chief Justice has spearheaded efforts to improve the integrity and effectiveness of the Judiciary. His efforts include a mission statement to guide the Judiciary, commonly known as the Davide Watch, which formed the basis for a formal Action Program for Judicial Reform (APJR), adopted by the Supreme Court in the year 2000.⁵⁶

The APJR is a concrete, on-going project which is the result of the various efforts of the Judicial Branch. It basically has six objectives or components, namely:

1. Judicial Systems and Procedure, including the development of streamlined rules and alternative dispute resolution mechanisms;
2. Institutional Development, to further establish the Judiciary as an distinct institution that is wholly independent from the political realm;
3. Human Resource Development, particularly improvement in legal education;
4. Institutional Integrity Development, to counter corruption within the Judiciary;
5. Access to Justice by the Poor that is both affordable and effective; and,
6. Reform Support Systems, which ensure the sustainability of judicial reform by building constituencies for reform through public education.⁵⁷

The goal for the APJR can be summarized in one fundamental point. The Judiciary needs a social reorientation to better equip its members and enable them to internalize the situation of those who come before them in

55. Hilario G. Davide, Jr. is the former Chief Justice of the Philippines. Prior to this position, he also held various positions in the Philippine Judiciary such as Chairman of the Bar Examinations and Computerization Committee, Member of Senate Electoral Tribunal, Chairman of House of Representatives Electoral Tribunal, Commissioner for the 1986 Constitutional Commission, Legislator and Faculty Member of the College of Law for Southwestern University in Cebu.

56. *Philippines' Chief Justice Outlines Judicial Reform Efforts*, at http://www.asiafoundation.org/Locations/philippines_davide.html (last accessed Feb. 13, 2006).

57. *Id.*

order to administer genuine social justice. This is manifested through the Judiciary's various projects. It is likewise shown through various Supreme Court rules and issuances. Under Judicial Systems and Procedures for example, one of the goals of the Supreme Court is to decongest court dockets in order to have speedy, yet effective adjudication of cases. The speedy disposition of cases can be viewed as a form of sensitivity to vulnerable sectors. In fact, in one case, where the Supreme Court was confronted with the task of making a judicial audit and physical inventory of the cases in the dockets of the Metropolitan Trial Court of Manila, Branch 2, it held that dedication and sensitivity to the parties of the case involves the prompt dispatch of cases.⁵⁸ One concrete method by which the Court is implementing speedy disposition of cases is by determining alternative modes of dispute settlement in which both court-annexed mediation and non court-annexed mediation will be considered. Another example is the strengthening of the Barangay Justice System⁵⁹ so that the indigent and marginalized will have increased access to justice.⁶⁰ To a certain extent, the efforts of the Judiciary of de-clogging court dockets have been successful. This is illustrated more succinctly by the table below:

TABLE I. CASES PENDING AND FILED IN COURTS⁶¹

COURTS	PENDING CASES (AS OF DECEMBER 1988)	CASES FILED (FROM 1 JANUARY 1999 TO 15 NOVEMBER 2005)	PENDING CASES (AS OF 15 NOVEMBER 2005)
SC	4,780	28,691	6,176
CA	19,173	83,630*	22,680*
SB	3,272	2,965	2,251
CTA	285	1,845	831
RTC	225,188	1,272,603	350,162
SDC	183,024	755,863	146,370
MeTC	177,935	659,518	119,876
MTCC	121,214	508,019	85,840
MTC	64,153	339,610	65,366
MCTC	182	232	45
SCC	227	2,245	273
TOTAL	799,433	3,655,221	799,870

* as of October 31, 2005

58. Administrative Matter No. 00-3-48-MeTC (2003).

59. Disputes are brought at the barangay level with the end in view of settling disputes so that there will be no need to seek court adjudication.

60. *Philippines' Chief Justice Outlines Judicial Reform Efforts*, *supra* note 56.

61. Hilario G. Davide, Jr., *The Philippine Judiciary 1999-2005*, Eleventh Lecture of Distinguished Lecture Series at New Session Hall, Supreme Court (Dec. 13, 2005) [hereinafter Davide Lecture].

The reform instituted is not limited to the de-clogging of court dockets. It also entails providing guidance for the judges at bench as well as their personnel. At the end of June 2001, the Supreme Court was able to issue 435 circulars and orders implementing the objectives of the APJR. "These directives, among other things, enjoin or provide, the strict observance of working hours and session hours of trial courts; grant incentives to judges who are given the additional duty of hearing and deciding cases of other branches of their courts or of other courts of the same level; limit the period of extensions of time on the part of the Office of the Solicitor General to file comments or appellee's briefs; mandate the exercise of utmost caution in the issuance of temporary restraining orders and writs of preliminary injunction; and prescribe guidelines for qualification for judicial office."⁶² One of the most tangible results of the APJR is the *Benchbook for Trial Court Judges*⁶³ which is a joint project of the Supreme Court with the Australian Agency for International Development (AusAID) and the International Development Law Institute (IDLI). Aside from the *Benchbook*, the High Court has also issued new supplements to the Rules of Court, which shall be discussed below.

Institutional Development, Human Resources Development and Institutional Integrity Development are inextricably linked. The Supreme Court has attempted to achieve judicial reform regarding these aspects by: (1) strengthening the code of ethics for justices, judges, lawyers and court personnel; (2) strengthening the monitoring of the conduct, operations and performance of judges, lawyers and court personnel; (3) implementing the computerized Judicial Performance Management System, within the pilot model courts, and higher courts of the Judiciary; and, (4) implementing a gender-sensitive Human Resources and Development Master Plan for non-judicial personnel and strengthening the overall capacities of the Philippine Judicial Academy.⁶⁴

The Supreme Court has identified four stages that compromise effective Human Resources Development. These are as follows: (1) reform and re-engineering, (2) determination of expected output and implementation

62. *Philippines' Chief Justice Outlines Judicial Reform Efforts*, *supra* note 56.

63. BENCHBOOK FOR TRIAL COURT JUDGES, available at <http://www.apjr-sc-phil.org/article/view/65> (last accessed Feb. 13, 2006) (it contains a multitude of topics, including substantive law, civil and criminal procedure in regular courts and the Sandiganbayan, judicial ethics and grammar).

64. Japan PHRD Funding Proposal, For the Technical Assistance Program, at <http://wbln0018.worldbank.org/RMC/PHRD/proc%20planning.nsf/0/22d02c945a873b5d85256c05006502e6?OpenDocument> (last accessed Feb. 13, 2006).

preparation, (3) implementation, and (4) review.⁶⁵ The expected output manifestations are: (a) Supreme Court administrative orders and circulars, (b) operating manuals, (c) design of consensus building conferences, (d) training and orientation programs designs and implementation, (e) draft bills of executive orders, and (f) advocacy program instruments.⁶⁶

In terms of ethics and conduct of judicial authorities and court personnel, the Supreme Court has recently promulgated the New Code of Judicial Conduct⁶⁷ and the Code of Conduct for Court Personnel.⁶⁸ The New Code of Judicial Conduct recognizes that the *Bangalore Draft*⁶⁹ is intended to be the Universal Declaration of Judicial Standards applicable in all judiciaries and adopts the same as part of the standards for the Philippine Judiciary.⁷⁰ It recognizes that the *Bangalore Draft* is founded upon a universal recognition that a competent, independent and impartial judiciary is essential if the courts are to fulfill their role in upholding constitutionalism and the rule of law and that it is essential that judges, individually and collectively, respect and honor judicial office as a public trust and strive to enhance and maintain confidence in the judicial system.⁷¹ As of 31 October 2005, the Supreme Court has already conducted 20 seminars on the New Code of Judicial Conduct participated by 1,124 judges, and 69 seminars on the Code of Conduct for Court Personnel participated by a total of 9,575 employees.⁷²

The New Code on Judicial Conduct, in essence, provides that judicial independence is a pre-requisite to the rule of law and a fundamental guarantee to a fair trial. Judges should therefore uphold and exemplify judicial independence in both individual and institutional aspects.⁷³ Judicial independence is defined as the capacity of the courts to perform their

65. Action Program for Judicial Reform Challenges, Issues, Vision and Guiding Principles, Technical Assistance to the Philippine Judiciary on Justice and Development, *available at* <http://www.apjr-sc-phil.org/filemanager/download/169> (last accessed Feb. 13, 2006).

66. *Id.*

67. Administrative Matter No. 03-05-01-SC, Apr. 27, 2004.

68. Administrative Matter No. 03-06-13-SC, June 1, 2004.

69. This is a Code adopted by the Group on Strengthening Judicial Integrity at the Round Table Meeting of Chief Justices held at the Peace Palace, Hague (Nov. 25-26, 2002).

70. NEW CODE OF JUDICIAL CONDUCT, Preamble (2004).

71. *Id.*

72. Davide Lecture, *supra* note 61.

73. NEW CODE OF JUDICIAL CONDUCT, Canon 1 (2004).

constitutional function free from actual or apparent interference, and to the extent that it is constitutionally possible, free from actual or apparent dependence upon any person or institution, including in particular, the executive arm of the government.⁷⁴ It is not a private right of judges but rather, is the foundation of judicial impartiality and a constitutional right of the people.⁷⁵

With regard to the Code of Conduct for Court Personnel, it recognizes that such personnel, from the lowliest employee to those occupying positions just below judges, are involved in the dispensation of justice and that any act of impropriety on their part immeasurably affects the honor and dignity of the Judiciary and the confidence that should be given it by the people.⁷⁶

Aside from the aforementioned new Codes regulating conduct, another method by which the Judiciary is shaping and improving its human resources is through the selection of judges and the maintenance of higher judicial standards. In line with this, the Court has employed a policy of choosing only competent individuals to join the ranks of the judiciary. And, while competency is a key factor in effective disposition of caseloads, it is not acquired by judges simply by attending workshops. The capabilities of a good magistrate are traits that are exhibited early on, even prior to appointment. Thus, the Judicial and Bar Council (JBC)⁷⁷ has promulgated new rules and policies “to ensure wider public scrutiny of the applicants’ merit and qualifications and guarantee that only the most competent are nominated.”⁷⁸

Furthermore, the vigilance of the Supreme Court does not end with ensuring that only highly-qualified individuals of known integrity and

74. Justice Hilarion L. Aquino, Chairman of Department of Ethics and Judicial Conduct, Philippine Judicial Academy, Supreme Court, Lecture on the New Code of Judicial Conduct (citing the Chief Justice of Tasmania, *quoted by* Justice R.D. Nicholson, Supreme Court Justice of Western Australia).

75. *Id.*

76. CODE OF CONDUCT FOR COURT PERSONNEL, Preamble (2004).

77. The Judicial and Bar Council is a Constitutionally-mandated Committee created under the supervision of the Supreme Court. It is composed of the Chief Justice as *ex-officio* chairman, the Secretary of Justice, and a representative of the Congress as *ex-officio* Members, a representative of the Integrated Bar, a professor of law, a retired Member of the Supreme Court, and a representative of the private sector. The Judicial and Bar Council has the principal function of recommending appointees to the Judiciary.

78. *Philippines’ Chief Justice Outlines Judicial Reform Efforts*, *supra* note 56.

probity get nominated for judicial positions. It has also developed a system of maintaining stringent standards by ensuring discipline in the office. Thus, in a span of seven years (from 1999–2005), 21 Regional Trial Court judges were dismissed from service, 21 more were suspended, and 227 others were fined.⁷⁹ Likewise, 27 first-level court judges were dismissed, 20 were suspended from office and 231 were fined.⁸⁰ Lawyers, of course, are similarly included under the High Court's campaign for discipline. Thus, within the same period, 28 lawyers were disbarred, 169 were suspended from the practice of law, 63 were reprimanded, 60 were admonished, 5 were censured, and 10 were warned.⁸¹

Still another method that the Court has employed to address the constitutional challenge is the introduction of female magistrates to the court structure. According to Myrna S. Feliciano, gender representation in the Philippine bench used to be plagued by an inertia of indifference.⁸² It was only in 1935 that Natividad Almeda Lopez became the first woman judge to be appointed to the Municipal Court of Manila. She was also the first judge of the Juvenile and Domestic Relations Court and the first woman justice at the Court of Appeals until her retirement in 1962.⁸³

In a lecture given by Justice Ameurfina M. Herrera entitled, *Does it Make a Difference that a Magistrate is a Woman?*, she posited that conventional wisdom would seem to point out that a jurist is a jurist, gender being an irrelevant futility to the dispensation of justice."⁸⁴ There are several arguments against this and at the outset, it seems that viewing the Judiciary through the perspective of gender is indeed irrelevant. However, it is undeniable that over that past years, court decisions have been greatly influenced by stereotypical conceptions of the male and female. This, of course, has led to what the Court feels is one of the more effective ways of battling such influence – tempering inequality with the introduction of more female magistrates in the court system.

On 31 December 1998, there were 1,451 first and second level court judges, only 259 (17.85%) of which were women.⁸⁵ There were 17,820

79. Davide Lecture, *supra* note 61.

80. *Id.*

81. *Id.*

82. FELICIANO ET AL., *supra* note 36, at 20.

83. *Id.* at 29.

84. *Id.*

85. Davide Lecture, *supra* note 61.

court personnel for all these judges, 9,298 (52.18%) of which were women.⁸⁶ As of November 30, 2005 however, first and second level court judges count 419 (28.03%) women among their ranks with 11,831 (57.71%) women personnel.⁸⁷

Finally, there is the program on Reform Support Systems, entailing “networking and collaboration between the Judiciary and civil society for undertaking cooperative reform advocacy.”⁸⁸ This does not preclude the participation of foreign, non-governmental support from various organizations, such as the Asian Development Bank, which for example, has conducted seminars on election laws for regional trial court and first level court judges and Philippine corporate culture seminars for commercial court judges, containing a well-balanced mix of legal, business and accounting topics.⁸⁹ The World Bank has sponsored *The Impact of Judicial Education Study*, which assessed the strengths and weaknesses of the Philippine Judicial Academy’s (PhilJA) educational programs, affirmed by the perception and estimation of the judge-participants as highly satisfying,⁹⁰ as well as *Judicial Reforms: Performance and Accountability*. The Court has likewise accepted the participation of other foreign groups such as the Asia Foundation which sponsored mediation seminars, internships, refresher courses, training workshops and various other fora.⁹¹ CD Technologies Asia donated *Lex Libris Folio of Laws and Jurisprudence* compact discs to all courts nationwide⁹² and to UNICEF.⁹³ Various embassies have also collaborated to provide

86. *Id.*

87. *Id.*

88. *Philippines’ Chief Justice Outlines Judicial Reform Efforts*, *supra* note 56.

89. See Philippine Judicial Academy, *Projects with Partners*, at <http://philja.supremecourt.gov.ph/partners.htm> (last accessed Feb. 13, 2006).

90. *Id.*

91. *Id.*

92. *Id.*

93. Projects conducted by UNICEF include the following: (1) Training of Trainers for a Comprehensive Juvenile Justice System for Children, Youth and Families, (2) Regional Multi-sectoral Seminars on Juvenile and Domestic Relations Justice, (3) Seminar-Workshops for Family Court Social Workers, (4) Seminar-Workshops on Strengthening the Legal Protection of Children, (5) Seminar-Workshops on Gender Sensitivity, (6) Court Appointed Special Advocates/Guardian Ad Litem (CASA/GAL) Volunteers’ Training, (7) Workshop on Video-Conferencing Trial of Cases Involving Testimony of Children, (8) Video production of a moot court trial on child abuse, via video-conferencing, and (9) Financing of video-conferencing facilities for Family Courts.

special training to court judges and personnel. Notable examples are: the British Embassy, which conducted workshops for family court judges and court social workers; the Finnish Embassy, which gave a financial grant of one million pesos to fund seminars regarding the IPRA;⁹⁴ and, the Canadian Embassy, which donated Pentium computers to be used for hands-on training of judges and to enhance computer literacy in courts and computer-aided legal research.⁹⁵

b.) Supplements to the Rules of Court

There are four recent major developments related to the Rules of Court which contribute to judicial reform. These are: (1) Rule on Custody of Minors and *Writ of Habeas Corpus* in Relation to Minors,⁹⁶ (2) Rule on Violence Against Women and Their Children,⁹⁷ (3) Rule on the Examination of a Child Witness,⁹⁸ and (4) Rule on Juveniles in Conflict with the Law.⁹⁹

i. Rule on Custody of Minors and Writ of Habeas Corpus in Relation to Minors

This new rule takes into consideration the special character and needs of children. The rule is to be applied, as the title indicates, to petitions for custody of minors and *writs of habeas corpus* in relation thereto. The rule contains provisions regarding who may apply for custody of minors or *writs of habeas corpus*, what the contents of the petition should be, and who should be served with summonses. It also provides grounds for motions to dismiss. Section 8 of the Rule likewise requires that a case study regarding the status of the child be conducted by a court appointed social worker, who is also directed to submit a recommendation report three days before any scheduled pre-trial. The pre-trial is mandatory.

Proceedings regarding the custody of minors and *habeas corpus* of persons, including minors, were previously governed by Rules 99 and 102 of the

94. An Act to Recognize, Protect and Promote the Rights of Indigenous Cultural Communities/Indigenous People, Creating a National Commission of Indigenous People, Establishing Implementing Mechanism, Appropriating Funds Therefore and for Other Purposes, Republic Act No. 8371 (1997).

95. *Philippines' Chief Justice Outlines Judicial Reform Efforts*, *supra* note 55.

96. Administrative Matter No. 03-04-04-SC, May 15, 2004.

97. Administrative Matter No. 04-10-11-SC, Nov. 14, 2004.

98. Administrative Matter No. 004-07-SC, Dec. 15, 2000.

99. Administrative Matter No. 02-1-18-SC, Apr. 15, 2002.

Rules of Court. At present however, the new Rule provides that the Rules of Court shall only apply in a suppletory character. The new Rule contains a salient feature not provided for in the old rules. Section 9 of the new Rule requires the respondent of each special proceeding to present the minor before the court at the pre-trial hearing. This provision gains special significance in cases where the parties are parents as it allows non-custodial parents to immediately see their child. It likewise allows the courts to make awards of provisional custody and temporary visitation rights. Lastly, it provides that there is no finality in custody judgments, the ratio being that the courts should be vested with authority to change a child's custodian should circumstances change, and as the interest of the child may warrant.

Another significant provision is Section 17, which provides:

Sec. 17 - The Court may issue a Protection Order requiring any person:

- a. To stay away from the home, school, business or place of employment of the minor, other parent or any other party or from any other specific place designated by the Court;
- b. To cease and desist from harassing, intimidating or threatening such minor or other parent or any person to whom custody of the minor is awarded;
- c. To refrain from acts of commission or omission that create an unreasonable risk to the health, safety or welfare of the minor;
- d. To permit a parent, or a party entitled to visitation by a court order or a separation agreement to visit minor at stated periods; and,
- e. To comply with such other orders as are necessary for the protection of the minor.

The Rule on Custody of Minors and *Writ of Habeas Corpus* in Relation to Minors likewise espouses the *parental preference rule* which means that in cases where the custody dispute is between a stranger and a parent of the child, the latter is preferred. It likewise follows the *maternal preference rule* or the *tender years rule* which prefers the mother as the custodian of the child in cases where the child is under seven years of age. But the Rule is, of course, subject to exceptions. It is, for example, inapplicable when the paramount interest of the child requires courts to render a contrary decision. As held in the case of *Cooke v. Cooke*:¹⁰⁰

Suffice to say that if the presumption of "maternal preference" is utilized within the restrictions articulated in the cases espousing it, a proper application neither denies nor abridges the equality of rights of either party. The "rights" of the parents are not the issue. They have been overridden

100. *Cooke v. Cooke*, 70 A.L.R.3d 255 (1974).

by the singular interests of the child which the parents in turn have submerged by their own acts, in a ratio directly proportional to their responsibility for the family's division. The child's best interest, the "cardinal principle" and the "paramount consideration" as described by the Chancellor, is not a "principle to be placed upon the balance scales" but rather is the measure by which all else is to be decided. No factor will be given weight that is not homogeneous with that "cardinal principle."¹⁰¹

One of the leading cases under this new Rule is the case of *Thornton v. Thornton*.¹⁰² In this case, the petitioner husband, an American, and the respondent wife, a Filipino, had a baby girl. The respondent enjoyed life as a housewife but later grew bored and decided to be employed as a guest relations officer in a nightclub. She would often go away from the house leaving the child in the care of household help. One day, the respondent decided to leave the family home, taking the child with her to Basilan. Petitioner filed a petition for a *writ of habeas corpus* with a designated Family Court of Makati which was dismissed, presumably on the ground that the child was in Basilan. Petitioner then filed a petition for the said *writ* with the Court of Appeals (CA) since the CA could issue a *writ* enforceable in the entire country. The CA denied the petition on the ground that it did not have jurisdiction over the case. It ruled that since Republic Act 8369 (The Family Courts Act of 1997) gave family courts exclusive original jurisdiction over petitions for *habeas corpus*, it impliedly repealed Republic Act 7902 (An Act Expanding the Jurisdiction of the Court of Appeals) and Batas Pambansa Blg. 129 (The Judiciary Reorganization Act). The Supreme Court ruled that despite the law saying that the Family Courts shall take exclusive jurisdiction over cases involving the custody of children, the CA must still take cognizance of the case in the child's primordial interest. What was controlling, according to the Court, was the intent and spirit, and not the letter, of the law. It held that a literal interpretation of the word "exclusive" would result in grave injustice and further negate the policy to "protect the rights and promote the welfare of children" under the Constitution and the United Nations Convention on the Rights of the Child.

ii. Rule on Violence Against Women and Their Children

According to Justice Reynato Puno, the Rule on Violence Against Women and Their Children was promulgated by the Supreme Court as an implementing rule to Republic Act 9262. The law was enacted by Congress pursuant to the CEDAW and the CRC to which the Philippines is a

101. *Id.* at 379-80.

102. *Thornton v. Thornton*, 436 SCRA 550 (2004).

signatory. Republic Act 9262, in turn, harnessed the criminal justice system to solve the problem of domestic violence.¹⁰³

In formulating the Rule, the Court took several factors into consideration. First, it took note of the fact that violence against women often takes place in families belonging to the low income group. Members of these families are often ill-educated, suffer from financial incapacity, and live in far away places where there are yet no Family Courts. Second, it recognized that the acts criminalized by R.A. No. 9262 are many and far ranging. They include, among others, physical and sexual violence, psychological violence, and economic abuse. These prohibited acts need to be prevented immediately for any vacillation may bring irreparable injury to the victim. Lastly, it acknowledged that judicial delay negates the rights of a victim.¹⁰⁴

Thus using the Rule as its vehicle, the Court addressed the first concern by drawing up a checklist to alleviate the difficulty of a petitioner in preparing a petition for a protection order. It also prepared the standard form of the petition, whether filed by the victim or a representative. The problem of financial capacity was also addressed by directing courts to accept and give due course to petitions where the victim is an indigent or where the victim does not have financial access to resources due to the suddenness of the violent incident, if there is a showing of imminent or threat of danger to the life or limb of the petitioner despite non-payment of docket fees.¹⁰⁵ The Rule also allows cases to be filed with the Regional Trial Court, Metropolitan Trial Court, Municipal Trial Court, Municipal Trial Courts in Cities and Municipal Circuit Trial Courts in places where there are no Family Courts.

The Court addressed the second concern by granting judges the right to issue *ex-parte* temporary protection orders which have a validity of 30 days. This protective order cannot, moreover, be avoided by the offender through the simple expedient of escaping the territorial jurisdiction of the issuing court, thus making service of the order impossible, because the order is now enforceable anywhere in the Philippines.¹⁰⁶ The Rule likewise provides for the strict enforcement of said protective orders. It requires law enforcement officers to submit a written report to the court within 24 hours from the

¹⁰³. Reynato Puno, *The Rule on Violence Against Women and Their Children*, available at <http://www.supremecourt.gov.ph/newsflash/oct/10-27-04.php> (last accessed Oct. 30, 2004).

¹⁰⁴. *Id.*

¹⁰⁵. *Id.*

¹⁰⁶. *Id.*

issuance of the order showing how it was implemented.¹⁰⁷ Also, a judgment granting a protective order does not preclude a victim for filing an ordinary civil action or a criminal action for damages against the offender. The Rule likewise requires a social worker to prepare a case study and program of intervention for the offended party, including referral to DSWD havens and other crisis intervention centers. The social worker is also mandated to monitor compliance with the protection order by the offender.

The last consideration was addressed by decreasing the number of days within which an offender may file an opposition. The Rule likewise requires the holding of an early preliminary conference. During the conference, the parties are obligated to submit their position papers. With the evidence of the parties already on hand, including their position papers, a competent judge can immediately dispose of most of the issues of the petition for protection order. In the event that subsequent hearing is necessary to decide the petition, the judge is required to apply the Rule on Summary Procedure to further assure the early termination of proceedings.¹⁰⁸

iii. Rule on the Examination of a Child Witness

This Rule is applicable to minors involved in criminal cases, whether as victim, accused or simply a witness.¹⁰⁹ The Rule aims to create an environment which will allow children to give reliable and complete evidence, minimize their trauma, and encourage them to testify in legal proceedings to facilitate the ascertainment of truth.¹¹⁰ Courts using the Rule are directed to liberally construe it in order to uphold the best interests of the child and promote maximum accommodation of a child witness, without prejudice to the constitutional rights of the accused.¹¹¹ The Rule allows the court to appoint a guardian *ad litem* for the child, who will not participate in the proceedings but shall assist the child during the court process.¹¹² It likewise provides that every child is presumed qualified to be a witness and that examination as to a child's competence shall be conducted only by the judge.¹¹³ Pertinent to this provision is the case of *People v. Bisda*¹¹⁴ where

107. *Id.*

108. *Id.*

109. RULE ON THE EXAMINATION OF A CHILD WITNESS, § 1.

110. *Id.* § 2.

111. *Id.* § 3.

112. *Id.* § 5.

113. *Id.* § 6.

Angela, a six-year old child and victim of kidnapping with ransom case, was considered by the Court as a competent witness. In this case, the Supreme Court declared that:

The determination of the competence and capability of a child as a witness rests primarily with the trial judge. The trial court correctly found Angela a competent witness and her testimony entitled to full probative weight. Any child regardless of age, can be a competent witness if she can perceive and perceiving, can make known to others, and that she is capable of relating truthfully facts for which she is examined. In *People v. Mendiola*, this Court found the six-year-old victim competent and her testimony credible. Also in *Dulla v. Court of Appeals*, this Court gave credence to the testimony of a three-year-old victim. It has been the consistent ruling of the Court that the findings of facts of the trial court, its calibration of the testimonies of witnesses and its assessment of the probative weight thereof, as well as its conclusions anchored on said findings are accorded by the appellate courts high respect if not conclusive effect absent clear and convincing evidence that the trial court ignored, misconstrued, or misinterpreted cogent facts and circumstances which if considered warrants a reversal or modification of the outcome of the case.

x x x

Appellants must come to grips with case law that testimonies of child victims are given full weight and credit. The testimony of children of sound mind is likewise to be more correct and truthful than that of older persons. In *People v. Alba*, this Court ruled that children of sound mind are likely to be more observant of incidents which take place within their view than older persons, and their testimonies are likely more correct in detail than that of older persons. Angela was barely six years old when she testified. Considering her tender years, innocent and guileless, it is incredible that Angela would testify falsely that the appellants took her from the school through threats and detained her in the “dirty house” for five days. In *People v. Dela Cruz*, this Court also ruled that ample margin of error and understanding should be accorded to young witnesses who, much more than adults, would be gripped with tension due to the novelty and the experience in testifying before the trial court.¹¹⁵

Aside from a guardian *ad litem*, the Rule also allows a child testifying at a judicial proceeding or making a deposition to be accompanied by one or two persons of his or her own choosing to provide emotional support.¹¹⁶ The Rule likewise provides that the court shall exercise control over the questioning of children in order to: (1) facilitate the ascertainment of the

114. *People v. Bisda*, 406 SCRA 454 (2003).

115. *Id.* at 479.

116. RULE ON THE EXAMINATION OF A CHILD WITNESS, § 11.

truth; (2) ensure that questions are stated in a form appropriate to the developmental level of the child; (3) protect children from harassment or undue embarrassment; and (4) avoid time wastage.¹¹⁷ Leading questions may be asked in all stages of the proceeding if the same will further the interests of justice,¹¹⁸ and the court may allow the child witness to testify in narrative form.

The Rule also provides that corroboration shall not be required for the testimony of a child to be considered credible. His testimony, if credible by itself, shall be sufficient to support a finding of fact, conclusion, or judgment subject to the standard of proof required in criminal and non-criminal cases.¹¹⁹ It also allows live-link television testimony in criminal cases where the child is a victim or witness¹²⁰ and a videotaped deposition when the child is not able to testify in open court at trial.¹²¹ Lastly, it has a sexual abuse shield rule, where evidence to prove the sexual predisposition of the victim as well as sexual behavior with others is inadmissible as evidence in sexual abuse cases.¹²²

iv. Rule on Juveniles in Conflict with the Law

This Rule applies to criminal cases committed by juveniles, which the Rule defines as “a person who at the time of the commission of the offense is below eighteen, but not less than nine, years of age.”¹²³ The objective of the Rule as stated in Section 2 thereof is to ensure that the justice system treats every Juvenile In Conflict with the Law (JICL) in a manner that recognizes and upholds his human dignity and worth, and instills in him respect for the fundamental rights and freedoms of others. It considers his developmental age and the desirability of his reintegration into and assumption of a constructive role in society in accordance with the principle of restorative justice.¹²⁴ The Rule is to be interpreted liberally to promote the best interests of the child in conformity with Philippine laws and the United

117. *Id.* § 19.

118. *Id.* § 20.

119. *Id.* § 22.

120. *Id.* § 25.

121. *Id.* § 27.

122. *Id.* § 30.

123. RULE ON JUVENILES IN CONFLICT WITH THE LAW, § 1.

124. *Id.* § 2.

Nations Convention on the Rights of the Child.¹²⁵ The Rule also provides for the procedure in taking a juvenile into custody.¹²⁶

It likewise provides for the conduct of initial investigation by the police. The investigation must at all times be done in the presence of either of the parents, guardian, relatives or a social welfare officer and counsel of his own choice.¹²⁷ It also affords the juvenile the right to privacy, by ensuring that his photographs and fingerprints are kept confidential and separate from the records of adults¹²⁸ and by placing a prohibition against the labeling of the child as a criminal, juvenile delinquent, or any other discriminatory name or act.¹²⁹

125. *Id.* § 3.

126. *Id.* § 6. The provision states:

Sec. 6. Procedure in Taking a Juvenile into Custody.— Any person taking into custody a juvenile in conflict with the law shall:

- (a) Identify himself and present proper identification to the juvenile;
- (b) Inform the juvenile of the reason for such custody and advise him of his constitutional rights in a language or dialect understood by him;
- (c) Refrain from using vulgar or profane words and from sexually harassing or abusing, or making sexual advances on the juvenile;
- (d) Avoid displaying or using any firearm, weapon, handcuffs or other instruments of force or restraint, unless absolutely necessary and only after all other methods of control have been exhausted and have failed;
- (e) Refrain from subjecting the juvenile to greater restraint than is necessary for his apprehension;
- (f) Avoid violence or unnecessary force;
- (g) Notify the parents of the juvenile or his nearest relative or guardian, if any, and the local social welfare officer as soon as the apprehension is made;
- (h) Take the juvenile immediately to an available government medical or health officer for a physical and mental examination. The examination results shall be kept confidential unless otherwise ordered by the Family Court. Whenever treatment for any physical or mental defect is necessary, steps shall be immediately taken by the said officer to provide the juvenile with the necessary and proper treatment;
- (i) Hold the juvenile in secure quarters separate from that of the opposite sex and adult offenders.

127. *Id.* § 8.

128. *Id.* § 9.

129. RULE ON JUVENILES IN CONFLICT WITH THE LAW, § 39.

During trial, courts are mandated to conduct hearings in a manner conducive to the best interests of the juvenile and in an environment that will allow him to participate fully and freely in accordance with the Rule on Examination of a Child Witness.¹³⁰ Section 26 of the Rule gives an enumeration of the duty of Family Courts, which shall have jurisdiction over cases involving JICL's. It also requires that a case study report to be conducted by a representative from the DSWD to be submitted to the Family Court where the case is filed, preferably before arraignment, in order to aid the court in the proper disposition of the case.¹³¹ In addition, the Rule provides for the procedure when a juvenile delinquent is unable to furnish bail or is denied bail. The juvenile delinquent shall be committed by the Family Court to the care of DSWD, a youth detention center, or a local rehabilitation center, or in the absence thereof, a city or municipal jail which shall provide adequate quarters for the juvenile, separate from adult detainees and detainees of the opposite sex.¹³² Lastly, the Rule provides for diversion proceedings for juveniles before arraignment.¹³³

2. Individual Reform

a.) Judicial Education

The Supreme Court's means of addressing individual reform is through judicial education. This does not only include giving judges updates on procedural matters but also takes into consideration the skills of judges, their awareness of society, as well as substantive law. In the words of a United States Justice, Justice Laccobucci, such education should be "education in a balanced mix of substantive law, skills training, and social context education."

In response to the necessity for judicial education, Congress created the Philippine Judicial Academy (PhilJa).¹³⁴ The PhilJa works in conjunction with the Supreme Court in training and educating aspirants to the Judiciary, newly appointed judges, judges who have served the Bench for a number of years, court personnel, and officials and personnel of quasi-judicial bodies. Its programs include: (1) a Pre-judicature Program — a month long program

130. *Id.* § 29.

131. *Id.* § 19.

132. *Id.* § 18.

133. *Id.* § 20.

134. An Act Establishing the Philippine Judicial Academy, Defining its Powers and Functions, Appropriating Funds Therefor and for Other Purposes, Republic Act No. 8557 (1998).

which aims to introduce participants to standards of conduct, norms of behavior and value-systems and introduce them to the skills demanded of a judge; (2) an Orientation Program — a five-day course for newly appointed judges to prepare them in the assumption of their office and lead them to examine their value hierarchies, clarify their value-systems, and resolve personal issues of conflicts or values and provide them with knowledge of substantive and remedial law that are of immediate practical significance; (3) an Immersion Program — where judges are allowed to observe a senior judge's conduct in judicial proceedings and court trials, observe the inventory of pending cases in the sala and tour the territory covered within the jurisdiction of his court; and (4) a Judicial Career Enhancement Seminar — where judges are updated on substantive and procedural law dealt with in their adjudicative functions, and shifting paradigms and new frames of reference in jurisprudence.¹³⁵

PhilJa likewise provides special courses for continuing legal education of judges for them to be continuously updated on special focus topics, such as: the Anti-Money Laundering Act, Indigenous Peoples' Rights Act, Environmental Law, E-Commerce Law, Rules on Electronic Evidence, and Rule on Corporate Rehabilitation. It also includes particular themes such as, corporate governance, gender sensitivity, and economic, social and cultural rights.¹³⁶ All these programs are geared toward instilling in judges a hierarchy of values, which gives special attention to sectors of importance such as women, children, and indigenous people.

While it is true that it is incumbent upon the Supreme Court to promulgate standards in the selection of court judges and personnel and in disciplining them, it is essentially up to the trial court judges and personnel themselves to make judicial reform happen even at the lowest level. One of the most palpable ways of doing this involves their treatment of party litigants. To successfully accomplish judicial reform, it is necessary to have an impartial judge who will give justice to both opposing parties to a case. But how can a judge be truly impartial in a social context?

IV. PROPOSED FRAMEWORK: THE SOCIAL CONTEXT THEORY

Richard Devlin suggests a formula which puts judicial independence into context. His theory includes three models which use independence as a means to an end — true impartiality. He suggests a framework aimed at

135. Philippine Judicial Academy, *Programs and Courses, at* <http://philja.supremecourt.gov.ph/programs.htm> (last accessed Feb. 13, 2006).

136. *Id.*

attaining pluralistic justice through fair, ethical, and responsible decision-making.

A. Models of Impartiality

1. Classical Conception: Blindfolded Themis

The first model is based on the most comfortable and commonly known depiction of impartiality — that of a blind-folded Themis.¹³⁷ This model is very straightforward and is considered the ideal of disengagement as it simply directs a judge to do two things. First, a judge is required to divest himself of all forms of conceptions and identifications¹³⁸. This is a precondition to the application of the second task, which is to discover the law and apply it as it is.¹³⁹ This model has equality before the law as its mantra. It follows the view that every person should be treated in the same way regardless of class or gender.¹⁴⁰ The assumption under the classical icon is that each person is an individual and that racial identity is presumptively irrelevant unless its particular relevance can be demonstrated in a case.¹⁴¹ This model ensures that reason, and not option, will prevail, thus assuring fairness in a judge's decisions. As such, judges are required to do nothing to indicate any favoritism or hostility during court actions. In Philippine law, this is specially provided for in the New Code of Judicial Conduct which states that “[j]udges shall perform their judicial duties without favor, bias or prejudice”¹⁴² and again in stating that “[j]udges shall ensure that his or her conduct, both in and out of court, maintains and enhances the confidence of the public, the legal profession and litigants in the impartiality of the judge and of the judiciary.”¹⁴³

As with all types of framework, the *Classical Approach*, of course, has certain limitations. First, the ideal of disengagement is contrary to the inescapable reality that humans are social beings, inevitably saturated with relationships and preconceptions.¹⁴⁴ Objectivity is tested through withdrawal

137. In Greek mythology, Themis is the Goddess of Order and Justice. She is a Titan who is the daughter of Gaea and Uranus and mother of Moirae, the Goddess of Fate. She is typically depicted as a blind-folded woman holding scales.

138. Devlin, *supra* note 51, at 10.

139. *Id.*

140. *Id.*

141. *Id.*

142. NEW CODE OF JUDICIAL CONDUCT, Canon 3, § 1 (2004).

143. *Id.* § 2.

144. Devlin, *supra* note 51, at 10.

or disinterestedness but it is very difficult to exhibit these when actually faced with those whom judges have to deal with. Devlin argues that “Justice blindfolded has a tendency to conflate impartiality with the impersonal, a move that can result in a judge’s humanity being subordinated to assume a bureaucratic role.”¹⁴⁵ A second problem is that the conventionalism of the classical approach renders it of dubious utility in a society undergoing fundamental cultural change.¹⁴⁶ There is a built-in-tendency within the classical model to believe that fair decision-making can only be achieved if there is solipsistic harmony with traditional ways of doing things. To the extent that the classical model accepts the myth of colorless individualism,¹⁴⁷ it runs the risk of mistaking colorblindness for cultural neutrality.¹⁴⁸ In relation to the diversity of sectors in the society, the classical model runs the risk of making no distinction whether a party litigant belongs to a marginalized sector which needs to be protected or not. According to John Rawls,¹⁴⁹ decisions about justice are best made behind a “veil of ignorance.”¹⁵⁰ The difficulty here is for a judge to veil ignorance despite being faced with a living, breathing, three dimensional, actual person, whose emotions are clearly observed by the judge.

2. Relationalist Model

The second model is based on an African artwork entitled *The Lord of Jurisprudence*.¹⁵¹ This model involves stepping into the shoe of the other or “entering the skin” of the other. This approach to impartiality goes to the

145. *Id.*

146. *Id.* at 11.

147. Recall that this model spurs from racialized diversity in the Canadian or North American context.

148. Devlin, *supra* note 51, at 11.

149. Rawls is considered by many to be the most important political philosopher of the second half of the 20th century and a powerful advocate of the liberal perspective. His most famous work “A Theory of Justice” argued persuasively for a political philosophy based on equality and individual rights.

150. See JOHN RAWLS, A THEORY OF JUSTICE (1971). Rawls sets forth the proposition that “Each person possesses an inviolability founded on justice that even the welfare of society as a whole cannot override. Therefore, in a just society the rights secured by justice are not subject to political bargaining or to the calculus of social interests.”

151. An African artwork which depicts a man who is not blinded like Themis, but who, on the contrary is with fully opened eyes. The man in the painting is pierced with knives representing the pain of attempting to internalize the perspectives and experiences of the others in the process of judging.

other end of the spectrum in the sense that it advocates empathy on the part of the judge in performing his or her tasks, as opposed to the *Classical Approach*, which requires that the judge be disengaged in dealing with the party litigants as much as possible. In the words of Madame Justice Bertha Wilson of Canada, “A judge must try to enter the skin of the litigant and to make his or her experience part of your experience, and only when you have that, to judge.”¹⁵² The prerequisite of this approach is for the judge to come to terms with the existence of natural inequality in the society and hierarchical social relations.

The main problem with this approach is the limited capacity of human beings to adequately come to terms with the position of others.¹⁵³ As human beings, each person is confined to his or her own inescapable social context which influences life experiences, conduct, and understanding of the world. Another problem is the danger of appropriation, that is, those empathizing with the marginalized may tend to speak on behalf of the latter and in the process mistranslate their experience.¹⁵⁴ Lastly, there is controversy as to whether the burden of relationalism is too great, whether people are actually capable of taking on the context and pain of the other and still be able to do the job of judging.¹⁵⁵

3. The Situational Approach

The thrust of this approach is sensitivity. It depicts a kind of justice wherein a judge is fully aware and informed of the larger social context surrounding the case. Devlin views the act of judging as a social act and is thus affected by a judge’s deep experiential contexts. Cultural factors are always crucial variants to be considered. Judging can only lead to impartiality if it is sensitive to social phenomena.¹⁵⁶ This third model of impartiality emphasizes that everyone who is involved in the legal process, both those who judge and those who are judged, are deeply affected by the process, and that differential treatment may in fact be a mechanism of equality.¹⁵⁷

The use of this approach entails that a judge put into inquiry the following question: “How am I to judge an ‘other?’” Put in another way, “Would I reach a different decision if the party in question was a male rather

152. Devlin, *supra* note 51, at 13.

153. *Id.* at 13.

154. *Id.* at 13.

155. *Id.* at 13-14.

156. *Id.* at 16-17.

157. *Id.* at 17.

than female and vice versa, rich or poor, indigenous or otherwise?" Likewise, from the point of view of the party litigants, a similar question needs to be raised: "[d]o I think that sufficient reason has been given to satisfy me that I have been treated in a fair manner, even if I have not won my point?"¹⁵⁸ The *Situational Approach* underscores the fact that problems of diversity cannot be avoided by rendering the differences invisible. Rather, it is desirable to explicitly address these distinctions with integrity and candor.¹⁵⁹

V. SOCIAL CONTEXT IN THE PHILIPPINE SETTING

Devlin's theories are not mutually exclusive. They do not mean that judges or other members of the Judiciary should adopt one of the approaches and preclude the use of the other two. At the same time, while it is understood that these models may not be the complete solution to settling disputes, they are, nevertheless, plausible approaches which put issues in perspective and hence must be taken into consideration. Further, his discussions are not only relevant to the North American setting but are equally significant in the Philippine social context. In fact, certain Supreme Court decisions within the last decade confirm the High Court's policy to exhibit sensitivity to the situation of the parties to a case.

The case of *People v. Cuizon*¹⁶⁰ is one such case. Here, the Supreme Court reversed the decision of the lower court convicting the accused because the trial judge failed to display less than full sensitivity to the right of the accused to be presumed innocent until proven guilty. Another example is the case of *Umil v. Ramos*¹⁶¹ where the High Court held that exceptions to the constitutional guarantee must be given with special care and sensitivity. In the case of *People v. Lucero*¹⁶² the Court reversed the decision of the lower court because it failed to display the required sensitivity to the appellant's right to counsel. Therein, the Court held that the right to counsel is not a mere right to counsel but also the right to effective and vigilant counsel. Lastly, in the case of *People v. Molina*,¹⁶³ which involved the automatic review of a death penalty case convicting the accused for the commission of incest committed by a father against his four children, the Court said that the manner of explaining the plea to the accused should take into consideration

158. Devlin, *supra* note 51, at 19.

159. *Id.* at 19.

160. *People v. Cuizon*, 256 SCRA 325 (1996).

161. *Umil v. Ramos*, 187 SCRA 311 (1990).

162. *People v. Lucero*, 244 SCRA 425 (1995).

163. *People v. Molina*, 372 SCRA 378 (2001).

his age, socio-economic status, and the manner of arrest. The Supreme Court added that the presumption of regularity in the performance of official duties does not apply to death penalty cases and that the change of the accused from his plea of not guilty to guilty should not prejudice him when the said accused was not made to fully understand the plea.

Decisions favoring the accused in the jurisprudence abovementioned should not be interpreted to mean that courts, in light of the policy of sensitivity to the parties of a case, should be partial to the accused. Nor should sensitivity to party litigants be interpreted to be available only to cases involving the Bill of Rights. Rather, these decisions invite magistrates to take a look at the dynamics of society, be aware of changes occurring in jurisprudence, and understand that there are situations when positive discrimination is actually the best perspective to take in order to achieve justice. This is especially true for highly vulnerable sectors of the society, such as women, children, and indigenous peoples. A survey of recent jurisprudence shows that the progressive view of the Supreme Court over the years has shaped the way courts decide cases affecting specific sectors of the society.

A. Women

Philippine courts have gone a long way from earlier decisions, like *People v. Godoy*,¹⁶⁴ regarding women. Present courts exhibit more sensitivity to the situation of women than they previously did. While it is true that the shaping of a new judicial perspective is still a work-in-progress, jurisprudence is nonetheless available to guide courts in future decisions.

The case of *People v. Genosa*¹⁶⁵ is instructive. This involved the resolution of an urgent omnibus motion filed by appellant Marivic Genosa requesting that she be examined by qualified psychologists or psychiatrists in order to determine her state of mind at the time she killed her husband. The reason for this was premised on a novel defense theory. Counsel for the accused pleaded the court's re-evaluation of the traditional elements used in determining self-defense and asked it to consider the *battered woman syndrome* as a viable plea within the concept of self-defense. Counsel further alleged that the syndrome was already a recognized form of self-defense in the United States and in Europe. In the United States particularly, it had been classified as a post-traumatic stress disorder, rather than a form of mental

164. *People v. Godoy*, 250 SCRA 676 (1995).

165. *People v. Genosa*, 341 SCRA 493 (2000).

illness. It thus had been held admissible in order to assess a defendant's perception of the danger posed by the abuser.¹⁶⁶

In granting the motion, the Court held that there are four characteristics of the battered woman syndrome, namely:

(1) the woman believes that the violence was her fault; (2) she has an inability to place the responsibility for the violence elsewhere; (3) she fears for her life and/or her children's lives; and (4) she has an irrational belief that the abuser is omnipresent and omniscient. Living in constant danger of harm or death, she knows that future beatings are almost certain to occur and will escalate over time. Her intimate knowledge of the violent nature of her batterer makes her alert to when a particular attack is forthcoming, and when it will seriously threaten her survival. Trapped in a cycle of violence and constant fear, it is not unlikely that she would succumb to her helplessness and fail to perceive possible solutions to the problem other than to injure or kill her batterer. She is seized by fear of an existing or impending lethal aggression and thus would have no opportunity beforehand to deliberate on her acts and to choose a less fatal means of eliminating her sufferings.¹⁶⁷

The Court said that in the instant case it was important to determine whether the appellant had acted freely, intelligently, and voluntarily when she killed her spouse. Since the Court recognized that it was not properly equipped on its own to evaluate the appellant's battered-woman-syndrome defense, absent expert testimony on Marivic's mental and emotional state at the time of the killing, as well as the possible psychological cause and effect of her fatal act, it ordered the partial reopening of the case to allow the defense an opportunity to present expert evidence.

Another case is *Perez v. Court of Appeals*,¹⁶⁸ where the Court exhibited its empathy for a working mother. The case involved a custody dispute between the father (respondent), a medical doctor in Cebu and his wife (petitioner), a registered nurse working in the United States. This case illustrates that, while the law (specifically Article 213 of the Family Code) and the Rules of Court provide that a child below seven years of age should be in the custody of the mother, this is subject to well-entrenched exceptions. In the past, the following grounds have been considered ample justification to deprive a mother of custody and parental authority: neglect, abandonment, unemployment and immorality, habitual drunkenness, drug

¹⁶⁶ *Id.* at 498-99.

¹⁶⁷ *Id.* at 498.

¹⁶⁸ *Perez v. Court of Appeals*, 255 SCRA 661 (1996).

addiction, maltreatment of the child, insanity and being sick with a communicable disease.¹⁶⁹

Respondent contended that the mother was incapable of properly caring for the child since she works twelve-hour shifts three times weekly, including, at times, in the evening. There being no one to help her look after the child, it was alleged that she could not properly attend to him. In deciding that the mother should be awarded custody, the Court held that:

[i]t is not difficult to imagine how heart-rending it is for a mother whose attempts at having a baby were frustrated several times over a period of six years to finally bear one, only for the infant to be snatched from her before he has even reached his first year... In prose and poetry, the depth of a mother's love has been immortalized times without number, finding as it does, its justification, not in fantasy but in reality.¹⁷⁰

The Court also said that the conclusion arrived at by the respondent was unwarranted and unreasonable because working mothers, who are away from home for long periods, are still able to raise a family well, applying time management principles judiciously; and, delegating child care temporarily to qualified persons who run day-care centers did not necessarily detract petitioner from the duties of a good mother, as long as she exercised supervision. The Court also held that working abroad did not automatically indicate that petitioner valued her career over her family because there are reasons for a person's seeking a job outside the country, such as the augmentation of income for the family's benefit and welfare, as well as for psychological fulfillment, to name a few.¹⁷¹

B. Children

With regard to children, it is evident that the Court is still trying to find ways of giving them ample protection and handling them cautiously in pending cases. The case of *People v. Baring*,¹⁷² is remarkable on this point. This case involved the rape of a 7-year old child. In affirming the accused's conviction, the Court held that the categorical testimony of the victim pinning him down as the perpetrator was sufficient, as said witness was found to be credible. The Court also noted that in child sexual abuse cases, the Court has adopted the Rule on Examination of a Child Witness to govern the examination of child witnesses, who are either the victims, the accused,

169. *Id.* at 668.

170. *Id.* at 671.

171. *Id.* at 670.

172. *People v. Baring*, 374 SCRA 696 (2002).

or witnesses to a crime. Pursuant to this, the Court expressed its uneasiness with the method by which the physical examination of the child was conducted — by inserting the finger of the examiner to the external vaginal orifice of the child.

Pertinent portions of the decision are reproduced below:

It bears to stress that this particular manner of establishing evidence — by determining the diameter/hymenal opening in rape cases — was a common practice in the past. With the passage of R.A. 7610, this Court has nonetheless allowed the utilization of the same kind of evidence in the prosecution of Child Abuse cases. In light however of radical medical developments and findings, specifically as to the determination of the existence of child sexual abuse, this Court deems it necessary to firmly adopt a more “child sensitive” approach in dealing with this specie (sic) or genre of crime.

x x x

[I]nsertion of a finger or any foreign matter inside the hymenal opening under the pretext of determining abuse is unnecessary and inappropriate. The Philippine Judicial Academy [PHILJA] training program for family court judges, through the auspices of the *U.P.-P.G.H. Child Protection Unit*, sanctioned that in prepubertal girls without active bleeding, all that is needed is an external examination with a good light source and magnification. Be that as it may, the physical findings alone will not be conclusive of child sexual abuse, for a child who gives a clear, consistent, detailed, spontaneous description of being sexually molested may still have normal genital examination. Despite the physical or laboratory findings, however, a child’s clear and convincing description of the abuse has a high rate of probability.

x x x

What is important at this point, and we do not hesitate to reiterate, is that forensic examination — inclusive of physical examination and forensic interview — of sexually assaulted children [adolescents included] must be conducted with maximum sensitivity to the young victim’s feelings of vulnerability and embarrassment. Great care must be observed in order to make the examination less stressful lest they be more traumatic to the victim than the very assault itself. The value of collecting evidence should always be weighed against the emotional cost of the procedure and examination of the child.¹⁷³

173. *Id.* at 709–12.

Another illustrative case is *People v. Abadies*,¹⁷⁴ which involves acts of lasciviousness committed by a father against his 17-year old daughter. In this case, the Court opined that:

[W]e deem it relevant to stress the escalating awareness and concern for the protection of the rights of children. The need of children for special protection was given recognition by the nations of the world as early as 1924 when the assembly of the League of Nations endorsed the Declaration of the Rights of the Child (commonly known as The Declaration of Geneva) which focused on children's welfare, specifically their economic, psychological and social needs. Reaffirming the fact that children need special care and protection because of their vulnerability, and the vital role of international cooperation in securing children's rights, the General Assembly of the United Nations adopted on November 20, 1989 the Convention on the Rights of the Child (CRC), which incorporates the full range of human rights – civil, political, economic, social and cultural – of children. The Convention stresses the duty of the state to take all the necessary steps to protect children from being sexually abused (as in rape, molestation and incest) or exploited (forced or induced into prostitution, pornographic performances and others). It is reassuring to note that we are not lagging far behind on the domestic front. Over the past years, Congress has enacted a number of laws relating to the protection of children's welfare and rights, while the executive department has issued various executive orders and proclamations in order to give teeth to the implementation and enforcement of these laws. These international instruments and national legislation emphasize that the primordial consideration in deciding issues and cases involving children is the welfare and best interests of the child. For its part, the Supreme Court has issued Administrative Circular No. 23-95 enjoining trial courts to act with dispatch on all cases involving children, including but not limited to pedophilia, child labor and child abuse cases. To date, procedural rules applicable specifically to cases involving children have already been approved by the Court such as the Rules on Examination of a Child Witness, on Commitment of Children, and on Juveniles in Conflict with the Law. *Our duty does not end here though. As the highest court of the land, it is incumbent upon us to give life to all these covenants, agreements, and statutes by enriching and enhancing our jurisprudence on child abuse cases, bearing in mind always the welfare and protection of children.*¹⁷⁵

174. *People v. Abadies*, 384 SCRA 442 (2002).

175. *Id.* at 451-53 (emphasis supplied).

C. Indigenous Peoples

One of the early recorded cases regarding indigenous people is the case of *People v. Cayat*.¹⁷⁶ This case involved Cayat, a native of Baguio, Benguet, who was prosecuted for violation of Act No. 1639 and was sentenced by the justice of the peace court of Baguio to pay a fine of five pesos or suffer subsidiary imprisonment in case of insolvency. Act. No. 1639, Section 2 thereof provided that:

It shall be unlawful for any native of the Philippine Islands who is a member of a non-Christian tribe within the meaning of the Act Numbered Thirteen Hundred and Ninety-Seven, to buy, receive, have in his possession, or drink any ardent spirits, ale, beer, wine, or intoxicating liquors of any kind, other than the so-called native wines and liquors which the members of such tribes have been accustomed themselves to make prior to the passage of this Act, except as provided in section one hereof; and it shall be the duty of any police officer or other duly authorized agent of the Insular or any provincial, municipal or township government to seize and forthwith destroy any such liquors found unlawfully in the possession of any member of a non-Christian tribe.¹⁷⁷

The issue raised by the accused was the constitutionality of the law. The accused contended that the law was discriminatory in violation of the principle of equal protection. In upholding the validity of the law, the Court held that the law was designed to promote peace and order in the non-Christian tribes as to remove all obstacles to their moral and intellectual growth and, eventually, to hasten their equalization and unification with the rest of the population. Its ultimate purpose could be no other than to unify the Filipino people with a view to a greater Philippines. According to the Court, the law did not seek to mark the non-Christian tribes as an inferior or less capable race. Despite this pronouncement, however, it is evident that, in this decision, the Court was influenced by the early Spanish/American perception that non-Christians are considered as uneducated and incapable of handling themselves in public, as compared to those who embraced the mainstream culture imposed by the colonizers.

*Rubi v. Provincial Board of Mindoro*¹⁷⁸ likewise reflects the Court's ruling in *Cayat*. The case involved a resolution adopted by the Provincial Board of Mindoro authorizing the governor to remove Mangyans from their domain and place them in a permanent reservation in Sitio Tigbao, Lake Naujan. Any Mangyan who refused to comply was to be imprisoned. Rubi, and

¹⁷⁶ *People v. Cayat*, 68 Phil. 12 (1939).

¹⁷⁷ *Id.* at 16.

¹⁷⁸ *Rubi v. Provincial Board of Mindoro*, 39 Phil 660 (1919).

some Mangyans, including one who was imprisoned for trying to escape from the reservation, filed an action for *habeas corpus* claiming deprivation of liberty. In denying the petition, the Court said it was a valid exercise of police power. It upheld the government policy promoting the idea that a permanent settlement was the only successful method of educating Mangyans.

The cases of *Cayat* and *Rubi* reflect the prevailing colonial policy of the *reduccion* aimed at civilizing the native inhabitants at that time. This, in turn, is reminiscent of the attitude of the colonial powers toward colonized peoples as coming within the context of a guardian-ward relationship or a state of pupillage.

Fortunately, the recent enactment of the IPRA and international recognition of the rights of indigenous peoples changed the legal landscape for the indigenous peoples. This is apparent in the case of *Cruz v. Secretary of Environment and Natural Resources*,¹⁷⁹ where the constitutionality of the IPRA was questioned on several grounds. One of the arguments of the petitioners pertained to the alleged violation of the principle of *jura regalia* which enunciates lands of the public domain, including all natural resources, belong to the State.

The IPRA recognizes the indigenous cultural communities or indigenous peoples as a distinct sector in Philippine Society. It refers to indigenous peoples as “a group of people or homogenous societies who have continuously lived as an organized community, communally bounded and defined territory,”¹⁸⁰ indicating that these groups of people have actually occupied, possessed and utilized their territories under claim of ownership since time immemorial.¹⁸¹ It confirms ownership and possession of ancestral domains and ancestral lands by the indigenous peoples using their customary laws on property rights and relations in the form of native title.¹⁸² Moreover, in settling disputes involving members of the community, indigenous modes may be applied.

The Court, in upholding the constitutionality of the IPRA traced the history of indigenous peoples and the nature of their culture and nomadic ways. It outlined the progressive development of international and domestic laws for the protection of the rights of indigenous peoples. It also mentioned

179. *Cruz v. Secretary of Environment and Natural Resources*, 347 SCRA 165 (2000).

180. *Id.* at 177.

181. *Id.*

182. *Id.* at 174.

the ruling in *Cariño v. Insular Government*,¹⁸³ which held that a native title to land in the Philippines, which for more than 50 years prior to the treaty of peace with Spain on 11 April 1899 was held by a native Igorot and his ancestors, held in accordance with native customs as private property, should be recognized by the government.¹⁸⁴

VI. CONCLUSION

The task of addressing systemic inequality whether in the context of racialized diversity or socio-economic-political inequality requires a multi-pronged approach. This paper has surveyed the complementary effort of the Judiciary in leveling the judicial field, particularly the asymmetrical circumstances of vulnerable sectors, such as, women, children and indigenous peoples. Moreover, the application of relevant concepts, such as the *Social Context Theory*, provides judges with an additional, and much-needed, interpretative tool in concrete cases. Judicial education and training in *Social Context Theory* could provide the appropriate venue for judges to develop their appreciation for new approaches to decision-making and other judicial functions.

Finally, pronouncements by the Court in recently decided cases are, encouragingly, indicative of a growing consciousness of the plight of those litigants most in need of protection.

As has been shown, the judiciary has played, and continues to play, a pivotal part in the enforcement of various constitutional mandates. From the enactment of rules that reflect a more socially-conscious outlook to the promulgation of decisions that enhance, if not improve altogether, both awareness in, and the plight of members of vulnerable sectors, the courts have carved their own particular niche in the attempt of the State to attain economic, political and social justice. Indeed, it is precisely for this purpose, to advance correlatively and mutually with the other branches of government the salutary intentions of our Constitution, that the judiciary was established. And as such, from it, nothing less can be demanded.

183. *Cariño v. Insular Government*, 41 Phil. 935 (1909).

184. *Id.* at 941.